SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY

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SIKKIM LEGISLATIVE ASSEMBLY SECRETARIAT
GANGTOK

No. SLAS/89-90/204/6489 Dated Gangtok the 5th October, 1989

NOTIFICATION

In pursuance of rule 75 of the Rules of Procedure and Conduct of Business in the Sikkim Legislative Assembly, the Speaker has been pleased to order the pre-publication of the following Bill:—

THE SIKKIM TRANSFER OF LAND (REGULATION) BILL, 1989
(BILL NO. 5 OF 1989) A BILL)
A
BILL

to provide further for the regulation of alienation of land in the State by Bhutias and Lepchas in favour of any person not being a Bhutia or Lepcha and for matters connected therewith or incidental or ancillary thereto.

Be it enacted by the Legislative Assembly of Sikkim in the Fortieth Year of the Republic of India as follows :-

CHAPTER I
PRELIMINARY

i. (i) This Act may be called the Sikkim Transfer of Land (Regulation) Act, 1989-
(2) It extends to the whole of the State of Sikkim.
(3) It shall come into force on the appointed day.

2. In this Act, unless the context otherwise requires,-
(a) " appointed day" means such day as the State Government may, by notify-cation in the Official Gazette, appoint for the commencement of this Act;
(b) "alienation" when used in relation to land, means the transfer of land by way of sale, ;lease, sub-lease, subletting, exchange, mortgage, gift, will, or any other from of bequest, agreement or settlement, and includes any other mode of transfer of land; but does not include any transfer of land by succ-cession in accordance with any law of inheritance;

(c) "Bhutia," or, as the case may be, "Lepcha," of Sikkimese origin, means a Bhutia, or, as the case may be, a Lepcha, whose name has been recorded in the Sikkim Subject Register and who has been declared as a citizen of India by or under the Sikkim Citizenship Order, 1975, and includes any Bhutia or Lepcha who may be granted Indian Citizenship by virtue of the notification of the Government of India, in the Ministry of Home Affairs, No. 214 (E), dated the-20th March, 1989;

(d) "Competent Authority" means such authority as the State Government may, by notification in the Official Gazette appoint for the purposes of this Act and different authorities may be appointed for the different provisions of this Act ;

(e) "land" means any type of land and includes rights in land, benefits to arise out of land, and buildings or other things which are attached to the land or permanently fastened to anything which is to Attached to the land ;

(f) "prescribed" means prescribed by rules made under this Act

(g) "State" means the State of Sikkim.

Act to have over riding effect.

3. The provisions of this Act shall have effect notwithstanding-anything to the contrary in any other law for the time being in force, or in any notification, order, custom or usages, having, for the time being the force of law, or in any contract, agreement, instrument, judgement, decree or order of any court.

CHAPTER II
REGULATION OF ALIENATION OF LAND TO PERSONS NOT BELONGING TO BHUTIA OR LEPCHA COMMUNITY

Restriction on registration of lands.

4. Notwithstanding anything contained in any other law for the time being in force relating to alienation of land, no alienation of land made by a person belonging to the Bhutia or lepcha community of Sikkimese origin shall be valid or deemed ever to have been valid unless such alienation is or was in favour of a person belonging to Bhutia or Lepcha community of Sikkimese origin :

Provided that any alienation of land by a Bhutia or Lepcha of Sikkimese origin to a person other than Bhutia or Lepcha of Sikkimese origin shall be valid of deemed to have been valid, only if the competent authority, on an application made to that effect by the parties concerned and after considering the circumstances in each case allows or had allowed such an alienation by an express order to that effect in writing.

Provided further that any such alienation as aforesaid shall be valid or deemed to have been valid if such alienation is or was made by an order of a court in recovery proceedings to satisfy any amount due on account of public demand, if no Bhutia or Lepcha Sikkimese origin offers to purchase the land in such proceedings, but in no other court sale, execution or other proceedings.

Registration on alienation of land by Bhutias or Lepcha

5. On and from the date of commencement of this Act, no document evidencing any transaction for possession of any land by an alienation shall be registered under the rules regarding Registration of Documents, 1 930 in force in the State, if it appears to the registering authority that the alienation has been effected in contravention of this Act or of any other law for the time being in force in Sikkim.

Lease or Suble-Tting of non-Agricultural Land.

6. Notwithstanding anything contained in any other provisions of this Act, any lease, sub-lease or subletting of building standing on non-agricultural land, together with land appurtenant thereto, made by a Bhutia or Lepcha of Sikkimese origin in favour of any person not belonging to the Bhutia or Lepcha community of Sikkimese origin for a period not exceeding twenty one years, may be registered by the registering authority and such lease sublease abd subletting shall thereupon be deemed to be valid, subject otherwise to any Tenancy or Rent Control Law, for the time being in force in the State.

Restoration of Bhutia-Lepcha land in certain cases.

7. (i) If an alienation of land belonging to a Bhutia or Lepcha of Sikkimese origin is made in contravention of this Act or of any other law in force prohibitting alienation of land belonging to a Bhutia or Lepcha of Sikkimese origin, the competent authority may on his own motion or on an application made by any person in that behalf, and after giving the transferee a reasonable opportunity- of being heard, by an order in writing eject the transferee or any person claiming under him from such land or part thereof and take possession thereof :

Provided, that: the transferee whom it is proposed to eject has not been in possession of such land or any portion thereof for a continuous period of twelve years or more,

(2) Whenever any land of portion thereof is taken possession of by the competent authority under sub- section (1), that authority shall settle the land possession of which has been so taken, on such terms and conditions as it may think fit in favor of the original transferred of that land or its successor in-interest :

Provided that if such transferer or successor-in-interest decline in writing to the settlement of such land in his favour the competent authority shall settle the land in favour of any person or persons belonging to the Bhutia or Lepcha community of Sikkimese origin as would ensure that the ownership or control of such land is so granted as to subserve the welfare and common good of the Bhutia or-Lepcha community of Sikkimese origin.

Compensation On ejectment.

8. (1) If any land had been alienated by a person belonging to the Bhutia or Lepcha community of Sikkimese origin in favour of a person belonging to the Bhutia or Lepcha community of Sikkimese origin at any time during the period of twelve years immediately preceding the appointed day, and the alienation is such that it could not have been validly made if, on the date of such alienation, the provisions of this Act had been in force, the competent authority may, by an order in writing, recover such land on payment of an amount equal to the value of the land, as stated in the instrument of transfer, for the determination of the stamp duty payable on such instrument of transfer or where no such value has been specified, the value adopted for the determination of the stamp duty payable for the transferl of the land-and shall also pay in addition to the said amount

(a) a reasonable amount which would have accrued oil the amount so stated in the instrument of transfer or, as the case may be, so determined for the purpose of payment of stamp duty, by way of interest ;

(b) the rents and other public dues which had to be, paid for the occupation of the said land ;

(c) the cost of improvement, if any, made to increase the yield from the land ;

(d) the cost of any building or other structure that they have been constructed on the land by the transferee at his own cost.

(2) No such acquisition shall be made except after giving to the transferee or his successor- in -interest as also to any other person having an interest in the land, a reasonable opportunity of showing cause against the proposed compensation.

Validation of old laws.

9. The provisions of this Act shall be in addition to and not in derogation of any provisions of the laws relating to the transfer of land for the time being in force in the State of Sikkim.

Appeal.

10. (i) Any person aggrieved by any order made under this Act, may prefer an appeal to such authority as may be prescribed for this purpose by the State Government.

(2) Every appeal shall be preferred within such time, in such manner and on payment of such fees, not exceeding rupees fifty, as may be prescribed

(3) The Appellate Authority may, after giving to the appellant and any other person who desire to be heard in the matter, a reasonable opportunity of making his representation, either confirm, modify or reverse the order appealed against, and the decision of the Appellate Authority the: be final.

CHAPTER III
Miscellaneous

Penalties

11. Whoever obstructs or prevents the competent authority from recovering the possession of any land where-from the transferee or his successor-in-interest has been ejected under this Act, shall be punishable with a fine not exceeding five thousand rupees or an imprisonment for a term which shall not exceed two years.

Cognizance and trial of Offence.

(1) No court shall take cognizance of any offence punishable under this Act except on a written complaint made by the competent authority or any person authorised in writing by the competent authority in this behalf.

(2) No court inferior to the court of a Magistrate of the First Class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be bailable and compoundable with the permission of the court.

13. When any alienation become void by reason of the fact that it was made in contravention of any provisions of this Act, such voidance shall not confer on the alienee any right to claim damages from the competent authority or the State Government.

Voidance of alienation not to confer any right to claim damages.

14. (i) The State Government may be notification in Official Gazette, make rules to carry out the provisions of this Act.

Power to makes rules

(2) In particular, and without prejudice to the to the generality of the foregoing poser
(a) The authority to which, the manner and time within which and fees not exceeding fifty rupees, on payment of which an appeal may be preferred under this Act ;

(b) The manner in which notices of ejectment from alienated land shall be served ;

(c) Any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid before the Legislative Assembly as soon as may be after it is made for a total period of thirty days which may be comprised in one session or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive session aforesaid, Legislative Assembly makes any modification in the rule or feels that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.